

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: NATIONAL PRESCRIPTION</b>	)	<b>CASE NO. 1:17-MD-2804</b>
<b>OPIATE LITIGATION</b>	)	
	)	<b>SPECIAL MASTER COHEN</b>
<b>THIS DOCUMENT RELATES TO:</b>	)	
<b><i>“All Cases”</i></b>	)	
	)	<b>DISCOVERY RULING NO. 14, PART 25</b>
	)	<b>REGARDING WALMART’S</b>
	)	<b>PRIVILEGE CLAIMS</b>

**AGENDA ITEM 311**

During Track Three discovery, defendant Walmart withheld production of certain documents based on attorney-client privilege. Plaintiffs took issue with a number of those decisions, and the parties engaged in a productive meet-and-confer process that narrowed the number of disputed documents. Plaintiffs requested *in camera* review of nineteen of the remaining disputed documents. Walmart agreed to downgrade six of these documents to “Not Privileged” and submitted the remaining disputed documents to the Special Master for *in camera* review. Both parties submitted a chart summarizing their arguments regarding each contested document. Walmart also submitted a letter brief detailing its arguments in support of privilege. Having considered these submissions carefully, the Special Master now rules on the challenged documents.

## I. Legal Standards.

The Special Master has applied the legal standards and authorities set out in **all** prior “Discovery Rulings No. 14, Part x,” and incorporates them by reference.<sup>1</sup> *See, e.g., Zigler v. Allstate Ins. Co.*, 2007 WL 1087607 at \*1 (N.D. Ohio Apr. 9, 2007) (a “communication is not privileged simply because it is made by or to a person who happens to be an attorney. To be privileged, the communication must have the *primary* purpose of soliciting legal, rather than business, advice.”) (internal quotation marks and citations omitted, emphasis in original); *see also Fed. Trade Comm’n v. Abbvie, Inc.*, 2015 WL 8623076 at \*9 (E.D. Pa. Dec. 14, 2015) (“attorney-client privilege does not apply . . . if the client seeks regulatory advice for a business purpose”). Also, when asserting attorney-client privilege, “[t]he burden of establishing the existence of the privilege rests with the person asserting it.” *United States v. Dakota*, 197 F.3d 821 at 825 (6<sup>th</sup> Cir. 2000). *See also* docket no. 3584 at 1 (“The burden is on the proponent to prove that the documents are privileged; and to be privileged, the communication must have the primary purpose of soliciting or receiving legal, as opposed to business, advice. That line is sometimes very difficult to draw when . . . [a company] operates in a heavily regulated business and regulatory compliance advice from in-house counsel is therefore part of [the company’s] day-to-day business operations.”). “Claims of attorney-client privilege are ‘narrowly construed because [the privilege] reduces the amount of information discoverable during the course of a lawsuit.’” *In re Columbia/HCA*, 293 F.3d 289 at 294 (quoting *United States v. Collins*, 128 F.3d 313, 320 (6<sup>th</sup> Cir. 1997)).

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<sup>1</sup> *See, e.g.*, docket nos. 1321, 1353, 1359, 1380, 1387, 1395, 1498, 1593, 1610, and 1666.

**II. Rulings.**

WMT PRIV 00004897	Privilege designation sustained.
WMT PRIV 00004958	Sustained.
WMT PRIV 00004989	Sustained.
WMT PRIV 00005000	Sustained.
WMT PRIV 00005068	Downgraded by Walmart to Not Privileged.
WMT PRIV 00005091	Downgraded.
WMT PRIV 00005149	Sustained.
WMT PRIV 00005172	Sustained.
WMT PRIV 00005191	Sustained.
WMT PRIV 00005244	Sustained.
WMT PRIV 00005258	Sustained.
WMT PRIV 00005382	Downgraded.
WMT PRIV 00007182	Downgraded.
WMT PRIV 00007190	Sustained.
WMT PRIV 00007194	Sustained.
WMT PRIV 00007204	Downgraded.
WMT PRIV 00007206	Sustained.
WMT PRIV 00007260	Sustained.
WMT PRIV 00007261	Downgraded.

**III. Objections.**

Any party choosing to object to any aspect of this Ruling must do so on or before April 15, 2021.

**RESPECTFULLY SUBMITTED,**

/s/ David R. Cohen  
**David R. Cohen**  
**Special Master**

**Dated: April 8, 2021**